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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ESTATES AT MONARCH COVE COMMUNITY ASSOCIATION,

Plaintiff and Respondent,

v.

MICHAEL RODARTE et al.,

Defendants and Appellants.

G045693

(Super. Ct. No. 30-2010-00376959)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David R. Chaffee, Judge. Affirmed.

Law Offices of William J. Kopeny and William J. Kopeny for Defendants and Appellants.

Law Offices of Jeri E. Tabback and Jeri E. Tabback for Plaintiff and Respondent.

I. INTRODUCTION

The owners of a vacant lot in an exclusive beachfront neighborhood in south Orange County appeal from a judgment requiring them to plant their slope all the way to the top and install an irrigation system. The work was required by a previous judgment entered half a decade ago. The judgment was well within the trial court's discretion, and we affirm.

II. BACKGROUND

Back in 1998,Michael Rodarte and his father Manuel purchased one of seven vacant lotsin a beach neighborhood in Orange County known as "The Estates at Monarch Cove."The property includes a slope. The covenants, conditions, and restrictions (CC&R's) governing the seven lots specifically provide that each lot "shall be used as a residence for a single Family *and for no other purpose*." (Italics added.) The Rodartes, however, never built a home on the lot. They *also* did not keep up the existing landscaping. The plaintiff in the case before us, the Estates' homeowners association ("the homeowner's association") sued the Rodartes and, in 2006, obtained a judgment against them after a jury trial. The essence of the 2006 judgment was that the Rodartes had to keep up the landscaping.

But an obvious question arose: keep up the landscaping to what level? The 2006 judgment anticipated that very problem, and did something creative to account for it: It included *pictures* of the level of ground maintenancerequired. Here is the relevant provision of the 2006 judgment:

"2. Defendants Michael and Manuel Rodarte shall maintain, repair, replace and restore landscaping on Lot 1, located at 1 Monarch Cove Drive in the city of Dana Point, California, in conformance and compliance with the governing documents for the Association, which shall include effecting the restoration, repair and maintenance of the plant life initially installed by the developer on the slope of Lot 1, to a level and standard consistent with the landscaping of Lot 1 as it appeared in November 2001, *and as is*

depicted in Exhibits 97A-E, which are attached hereto and made a part hereof, no later than 120 days from the date of Notice of Entry of Judgment." (Italics added, capitalization modified.)

By June 2010, the homeowners association had again become unhappy with the level of landscape maintenance of the Rodartes' lot, and filed this suit. Among the causes of action were allegations the Rodartes had violated court orders by not complying with the 2006 judgment. Once again there was a jury trial, and once again the Rodartes lost. After a long detour through the bankruptcy courts, the Rodartes' appeal from the 2011 judgment is now before us.[1]

III. DISCUSSION

As we understand the Rodartes' opening brief, there are two aspects of the judgment to which the Rodartes have particular objection: First, they complain about a provision making them responsible to landscape the slope all the way to the top, plus install a working irrigation system to service that landscaping.Second, they object to provisions that severely restrict their ability to use their lot as a de facto campsite. For example, the judgment makes clear that they cannot put a beach chair, umbrella or sun shade on their property and then just sit back and enjoy the view. Concomitantly, there is a nuisance abatement provision in the judgment that prevents Michael Rodarte, specifically, from "being at" the lot except between 8 a.m. and 5 p.m. on weekdays until

[1] Here is the relevant chronology: Back in late 2011, the Rodartes obtained an extension to file their opening brief to March 2012. But in March 2012, they informed the court that Michael had filed a petition in bankruptcy court back in January 2009. This court (naturally) stayed this appeal and requested status reports on the bankruptcy case. One of those updates in early 2013 indicated that the appeal was no longer affected by the automatic stay in bankruptcy law (see generally 11 U.S.C. § 362), so the appeal was on again, and, by mid-May 2013, both the opening brief and respondent's brief had been filed. But by June 2013, there appears to have arisen a dispute between Michael, on the one hand, and the trustee for the bankruptcy estate on the other, as to who should represent the estate in the appeal. A reply brief still had to be written. No reply brief was ever filed, however, and in October 2013, the bankruptcy trustee moved to stay the appeal in its entirety. This court granted the motion that month. The appeal remained stayed until May 2015. At that point once again a reply brief was due. But by October 2015, all time (including subsequent extensions) had lapsed on the possibility of a reply brief and the case finally reached the "fully briefed" stage with oral argument scheduled for March 2016.

a permanent residence is constructed.There is also a provision in the judgment for token compensatory damages of $2,700 awarded to the homeowners' association.

Though these are the discrete provisions which have provoked the Rodartes' ire, their primary argument on appeal targets the judgment as a whole. The Rodartes argue the trial judge improperly committed to the jury a matter of linguistic interpretation reserved for judges, namely – precisely what was meant in the 2006 judgment.[2] The Rodartes' theory is that the trial court allowed the jury to decide an ambiguity in the 2006 judgment, namely whether the use of the phrase "governing documents" included certain architectural guidelines which apparently are clear that 100 percent landscaping plus an irrigation system are required.According to the Rodartes, the trial judge should have determined, as a matter of law, that the phrase "governing documents"*didn't* include the architectural guidelines. The practical effect of their theory is that, as they read the 2006 judgment,they only had to restore the slope half way up without bothering with either the top half or an irrigation system.[3]

There are two independent reasons this challenge is not viable. One, very simply, its premise is faulty. The jury *was* instructed, in jury instruction number 25 as a matter of law, that the governing documents of the homeowners' association "include the CC&R's, the Bylaws and the Architectural Guidelines."Thus the court never allowed the jury to decide a matter of law in the first place.

The second reason is that there was no prejudice in any event. The trial judge was correct in telling the jury the guidelines were part of the governing documents. An entire article of the CC&R's (Article VIII) is devoted to setting up an architectural committee and giving that committee the authority to "promulgate reasonable

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[2] There is no question that matters of the interpretation of language, including that in court judgments, are issues of law for the court. (E.g., *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1501-1502 [ambiguities in court judgments are for the courts to adjudicate].)

[3] At least that's what we think their main argument is. Pages 12 through 17 of their opening brief are devoted to this argument, but those pages are less than crystal clear.

standards"(section 8.1). That article does not allow any alteration of an improvement, "including landscaping" without approval of the architectural review committee (section 8.2). Moreover, the article actually *requires* the architectural committee to issue "guidelines" for use in evaluating submissions to the committee (section 8.2). It is thus obvious that the CC&R's – "governing documents" if ever there were any – incorporated the guidelines that it contemplated the architectural committee would issue by reference.

We must also point out that this record is particularly unsuited for even the possibility of reversal in regard to the landscaping requirements. As noted above, the relevant provision of the 2006 judgment set, as the standard for compliance, "a level and standard" as depicted in five pictures attached to the judgment. But here's the problem: On appeal, we begin with the presumption a trial court judgment is correct and it is the appellant's burden to show prejudicial error. (See, for example, most recently from this division, *Carbajal v. CWPSC, Inc.* (Feb. 26, 2016, G050438) ___ Cal.App.4th ___, ___ [2016 Cal.App. LEXIS 152 at p. 3].) But if one examines the pictures, as presented in the appellant's appendix in this case, one finds they are totally useless. The pictures show only grainy masses of gray and white, and it is impossible to tell what level of landscaping they actually show. So we must presume what the trial court and jury saw was commensurate with the trial court's judgment, which leaves appellant unable to show error.

The only other issue on appeal is a contention that the restrictions against Michael Rodarte personally are too broad. The reason for those restrictions was thathe was literally making a nuisance of himself.

Michael Rodarte's behavior may be grouped into two major categories. The first category we may call the "campground" evidence. It included these facts: Michael would regularly arrive at the lot early in the morning before sunrise and stay until after dark. He would put up a pop-up sun canopy, and chaise lounges or beach chairsand on occasion put up a badminton or volley ball net. A number of trash bags

would be strewn about the property, which would result in crows picking at the bags and spreading trash. He would also use the property to store his bicycles, a surfboard, fishing poles, and golf clubs. As one witness described the scene, "the whole place looks like a yard sale."

The second category went beyond neighborhood aesthetics. It entailed actions deliberately aimed at annoying the neighbors. Not only would Michael arrive before dawn, but he would shout and scream as he did his early morning exercises. He would also stare into neighbors' homes when their front area was glass and take pictures of front doors and windows.He would ride his bicycle "up on the decks" when neighbors were showing their property to prospective buyers. And he would try to stare down those prospective buyers. And in at least one instance he hid in bushes and followed neighbors walking their dog after dark.

As to the campsite issues, there can be no doubt that as a matter of contract and property law the trial court's judgment was correct. The CC&R's are very specific that the property is to be used *for no other purpose* than a "residence for a single Family," and yet Michael was doing precisely that. Put another way, given the CC&R's, he had no *property right* to use the lot as his day camp.

Concerning the annoyance issues, the jury was entitled to conclude that Michael's staring constituted the conveyance of implied threats. Criminal courts deal with that sort of behavior all the time – in some contexts it's called mad-dogging. (E.g. *People v. Jones* (2003) 108 Cal.App.4th 455, 459 [defendant would "'mad-dog' stare" at ex-girlfriend whose child he would later murder].) Mad-dogging consists of staring in order to intimidate the person stared at. (*People v. Torres* (2008) 163 Cal.App.4th 1420, 1423, fn. 2) His other actions, such as the early morning shouting, also involved external effects directed at the neighbors and not just confined to the unsightliness of his own property.

Since the relevant standard of review is abuse of discretion (*People ex rel. Sorenson v. Randolph* (1979) 99 Cal.App.3d 183, 190 [trial courts have "broad discretion" in "fashioning appropriate remedies to abate public nuisances"]) there can be no question the court acted reasonably. Indeed, given the evidence that Michael was *deliberately*trying to annoy his neighbors even to the point of spoiling their chances of selling their homes, the judgment is, if anything, temperate in its restrictions on his behavior.

IV. DISPOSITION

The judgment is affirmed. Respondent homeowners' association will recover its costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.